

GIBSON v. TILTON.

On a motion to dissolve an injunction, objections of every kind to the answer may be made, and are then in order ; and it is a general rule, that if the facts on which the equity of the injunction rests are denied, the injunction must be dissolved ; otherwise it must be continued to the final hearing.

An affidavit made in another State to an answer to a bill in this court, being an authentication called for by a tribunal here, is a part of the judicial proceedings of this State ; and is not such a judicial proceeding, of another State, as comes within the provision of the Constitution of the United States, and the acts of Congress respecting the manner in which such proceedings shall be proved.

The sending of commissioners to other States to have testimony there taken ; and, the having of answers in chancery, and the like, authenticated there, by affidavit or otherwise, has long been considered as one of the most common instances of the interchange of courtesies among the nations of Europe ; and is a kind of comity which should be liberally extended among the States of this Union.

Although a person, who so testifies, or makes an affidavit abroad, cannot be proceeded against criminally here ; yet a party here, who should knowingly use such spurious evidence, might be punished here for practising an imposition upon the court.

This bill was filed on the 2d of September, 1826, by *Fayette Gibson* against *James Tilton*, in which it is alleged, that owing to various circumstances, the defendant *Tilton* had recovered a judgment at law against the plaintiff *Gibson*, for a large sum of money which he had discovered was really and in equity not due to him. Whereupon it was prayed that an injunction might be granted to stay execution, and for general relief, &c. An injunction was ordered as prayed ;—after which the defendant put in his answer, and gave notice of a motion to dissolve the injunction.

23d July, 1827.—BLAND, *Chancellor*.—This motion for a dissolution of the injunction standing ready for hearing, and the solicitors of the parties having been fully heard, the proceedings were read and considered.

It appears, that the defendant is a resident of the State of Delaware, where, after subscribing his name to his answer, he swore to its truth, which acts are certified by the judge in these words :—“ Sworn and subscribed this twenty-sixth day of April, A. D. 1827, before *Kensley Johns*, Chief Justice of the Supreme Court of the State of Delaware.” To which is subjoined a certificate, in the usual form, by the clerk of New-Castle county, in the State of Delaware, that *Kensley Johns* was then Chief Justice.

It was objected, that the answer was insufficient ; was not properly sworn to ; and that the certificate was not in the form prescribed by the act of Congress of the 26th of May, 1790, ch. 11,